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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/764,718	01/18/2001	Patrick H. Wnek	5887.00	7564

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INTELLECTUAL PROPERTY DEPARTMENT  
370 SEVENTEENTH STREET  
SUITE 4700  
DENVER, CO 80202-5647

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT PAPER NUMBER

3727

DATE MAILED: 10/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/764,718

Applicant(s)

WNEK, PATRICK H.

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 and 16-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 16-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 17, 20 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 17 recites the limitation "said paperboard material" in line 4. There is insufficient antecedent basis for this limitation in the claim.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 9-11 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Keiding.

Keiding discloses a nestable container made at least partially of paperboard, the inner surface of the side wall includes an inwardly projecting bulge (4 or the portion of the inner surface above channel 6) and the outer surface of the side wall includes an outwardly projecting bulge (one of the bulges 2). The outwardly projecting bulges cooperate with the inwardly projecting bulge of an underlying nested container to encourage aligned nesting of the containers.

Claims 1-4, 9, 10 and 17-21 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Morita et al. (Morita).

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Claims 1-4, 9, 10 and 17-21 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hirano.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, 12, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newman et al. (Newman) in view of Keiding.

Newman discloses a nestable container with an inwardly projecting ring-like bulge as shoulder (11) and an outwardly projecting ring-like bulge as the combination of ribs (10) and the portion (13) of the side wall that projects outwardly of portion (5) of the side wall, the lower end of ribs (10) cooperate with the shoulder (11) of an underlying nested container to encourage aligned nesting of the containers. Newman discloses the invention except for the paperboard material. Keiding teaches paperboard material. It would have been obvious to replace the plastic material with paperboard material in order to reduce material costs.

For claim 16, the combination discloses the invention except for the microwave susceptor layer. Microwave susceptor layers are well known. It would have been obvious to add a microwave susceptor layer in order to cook the food contents of the container.

Claims 1-8, 12, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petitto in view of Keiding.

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Petitito discloses the invention except for the container being made of paperboard.

Keiding teaches paperboard material. It would have been obvious to replace the plastic material with paperboard material in order to reduce material costs.

For claim 16, the combination discloses the invention except for the microwave susceptor layer. Microwave susceptor layers are well known. It would have been obvious to add a microwave susceptor layer in order to cook the food contents of the container.

Claims 1-12 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keiding in view of Sorensen.

Keiding discloses the invention except for the outwardly projecting bulge being horizontally aligned with the inwardly projecting bulge. Sorensen teaches a nestable container with an outwardly projecting ring-like bulge defined by ledge (18) and ribs (30) which project outwardly from lower wall section (24) and an inwardly projecting ring-like bulge defined by ledge (18) and ribs (28) projecting inwardly from upper wall section (20). It would have been obvious to modify the bulge/rib construction of Keiding to have Sorensen's arrangement in order to align the bulges so that the amount of not overlapped or not nested space is minimized to compactly nest the containers and nest more containers in less space.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Keiding.

Keiding discloses the invention except for the microwave susceptor layer. Microwave susceptor layers are well known. It would have been obvious to add a microwave susceptor layer in order to cook the food contents of the container.

Claims 1-6, 9-11 and 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keiding in view of Morita, Hirano, Lavigne or Stocking.

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Keiding discloses the invention except for the pleats and score lines. Morita, Hirano, Lavigne and Stocking teach paper or paperboard containers made with pleats and corresponding score lines. It would have been obvious to modify the construction of Keiding to be formed with pleats and corresponding score lines in order to control the amount of material being used by first starting the forming operation with a sheet or board of known dimensions which eliminates the need to provide another means to closely regulate the amount of material being placed within a mold such as a weighing mechanism.

Applicant's arguments with respect to claims 1-12 and 16-21 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9302. This practice

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may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner

Any inquiry concerning this communication of earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is (703) 308-1035.

  
Stephen Castellano  
Primary Examiner  
Art Unit 3727

October 10, 2002